

1904-074 Chancery Causes: John W. Rivers vs. E. S. Stout &  
Lee Co.

Lucas, Pennington

CA-Debt  
T-Property

- Land survey



To the Hon. H. A. W. Skem, Judge of the  
Circuit-Court for Lee County, Va.

Humbly Complaining, your orator J  
W. Rivers, sheweth to the Court; that  
on or about the 20 day of November 1903,  
one John Lucas and wife, sold unto  
one E. S. Stout a certain tract or parcel  
of land situate and being in Lee County  
Virginia, for the sum of fifteen hundred  
dollars, for which said land the said  
Lucas & wife executed their title bond  
a copy of which herewith filed marked  
"E. S. A", and prayed to be read and  
treated as a part of this bill, and  
to which ~~and~~ reference is hereby made  
for a more particular description of said  
land, and for the terms of payment  
for said land: That by the terms  
of said title bond, a part of said  
purchase price of said land was paid  
in hand at the time of the execution  
thereof, and the residue to be paid  
in two equal instalments of five hun-  
dred dollars each: that the first-said  
two instalments was duly paid at maturity,  
but the last was not paid by said  
E. S. Stout when it became due and  
payable, and has not yet been paid;  
that said <sup>last</sup> installment was evidenced  
by the writing obligatory of the said  
E. S. Stout; bearing his signature and  
sealed with his seal, and bearing date



of the 20 day of November, 1900, and  
payable on the first day of January  
1903, and bearing interest from the 1<sup>st</sup>  
day of January, 1901. That on the 1<sup>st</sup> day  
of January, 1901, the said John Lucas assigned  
said writing obligatory, for value received  
to Elkanah and Rebecca Pennington, in  
the following words and figures, to wit:  
"I assign the within note over to Elkanah &  
Rebecca his wife to be collected by them  
as payment for one tract of land near  
Dryden Lee County Va. vendors share is retained  
on the above named tract of land for the  
payment of this note in full bearing date  
of January 1<sup>st</sup>, 1901. This date Jan 1, 1901  
Witness C. H. Lucas. John Lucas."

which said assignment was as is written  
across the back of said writing obligatory.  
That on the 19 day of Aug. 1901, the said  
Elkanah Pennington and I Rebecca Pennington  
assigned the said writing obligatory over  
to your orator for a value received which  
said assignment was written on the back  
of said writing obligatory in the following  
words and figures, to wit: "We assign the  
within note over to J. W. Rivers for value  
received of him in cash this August 19 1901.  
Elkanah Pennington  
Rebecca Pennington.

Now your orator will show your honor that  
said writing obligatory has never been paid  
your orator, or any part thereof, by the  
said E. S. Stout, John Lucas, Elkanah Pennington



ton, or Rebecca Pennington; & any part thereof,  
but on the Contrary, the whole of said  
writing obligatory together with the interest-  
thereon remains due and unpaid to your <sup>oplor</sup> ~~honor~~  
<sup>which said writing obligatory is herewith filed as part of this bill marked "B"</sup>  
Your orator is advised that said writing  
obligatory constitutes a lien upon the  
tract of land sold by said Lucas and  
wife to said E. S. Stout, and on the tract  
of land sold by said Pennington & wife  
to said Lucas, and that your orator  
is entitled to have said tracts of land  
sold to pay of said liens.

Your orator is advised that said  
E. S. Stout is claiming that said Lucas  
sold him the land first-aforsaid by  
the acre, and that he the said Stout  
is entitled to an offset-against-said  
note or writing obligatory, because the  
said tract does not contain as much as  
80 acres of land. But the said Lucas  
contends that he sold said land by the  
boundary, and that he signed said  
title bond through fraud and misrepresen-  
tation on the part of said Stout; he  
the said Lucas being an unlearned  
man, and the said Stout explaining  
to him that the title bond did not  
mean that the land was being sold  
by the acre but by the boundary.

Your orator will further show your honor,  
that the said E. S. Stout told the  
said Elkanah Pennington before



the said Penningtons became the purchasers of said writing obligatory that it was a good note, and that he Stoul owed the money to said Lucas, and therefore he is estopped from pleading an offset, if otherwise entitled to plead.

Now the object of this suit is to obtain judgment against the defendants E.S. Stoul, John Lucas, Elkanah Pennington and Rebecca Pennington for the amount of said writing obligatory, with the legal interest thereon, and to subject first the land sold ~~for~~ said E.S. Stoul by said Lucas, as described in said Title bond, or to so much of said debt as said Stoul may owe, and secondly to subject the land sold by said Penningtons to said Lucas for the residue thereof. The prayer of your orator therefore is, that the said E.S. Stoul, John Lucas, Elkanah Pennington and Rebecca Pennington be made parties defendants to this bill, and be required to answer the same, but they need not do so under oath, the oath being waived; that the said John Lucas be required to execute to the said E.S. Stoul and file in this Cause, a deed for said land <sup>to be delivered when said debt is paid</sup> according to his agreement therefor; that your orator recover judgment against the said defendants for the sum of \$500<sup>00</sup>, with interest from the first day of Jan. 1901, till paid; and that said judgment be decreed to be a lien on the said land mentioned



in said title bond, and on the land  
sold by said Penningtons to said Lucas.

And that said lands be decreed to  
be sold to pay said liens; And that  
all such other further and general  
relief be granted your orator as <sup>in</sup> the  
nature of ~~the~~ <sup>this</sup> cause, is just and right;  
And your orator will ever pray etc.

J. C. Noel.



Nov 21st 1903

Plffs Costs

M- Clerk 2.92

Tax 1.50

Shff 2.00

attf 15.00

Morgan C. Clerk .50

Ewing 76 \$21.92

76

\$22.68

J. W. Rivers  
vs Bill in Chan.

E. S. Gould - et al

1903. 2<sup>nd</sup> Sept rules bill filed  
Summons executed & D. N.

" 1st October rules D. N.  
Confirmed & Cause set  
for hearing



To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The separate answer of E.S.Stout to a bill exhibited against him and others in this Honorable Court by J.W.Rivers.

Respondents saving the benefit of all exceptions as may be taken to said bill on its final hearing, for its various misstatement of facts and erroneous conclusions of law, for answer thereto, or to so much thereof as he is advised it is material for him to answer, answering says:

That it is true that on or about the 20th day of November, 1900, he purchased from John Lucas and wife a tract of land lying on the north side of Wallens Ridge and represented by the said Lucas and wife as containing Eighty (80) acres at the price of \$1500.00, \$500.00 of which was paid in cash, and notes executed for the residue of the purchase price of said land by installments of \$500.00 each.

It is further true that at the time of said purchase the said Lucas and wife executed to your respondents a title bond, by which they bound themselves upon the payment of the purchase price of said land to execute to your respondent a good and sufficient deed conveying the said 80 acres of land by proper metes and bounds with covenants of general warranty, free from all encumbrances, a copy of which bond is filed by the plaintiff with his bill marked "Exhibit A" to which said bond reference is here made, and the same is adopted and asked to be treated as a part of this answer.

Your respondent will now show your Honor that at the time he purchased said land, he was by no means familiar with it; it was represented to him as containing 80 acres, which representations supposed to be honestly made, but being unfamiliar with the contents of said land he required to be guaranteed by said vendors. And an inspection of said bond will show that the said Lucas and wife guaranteed said tract of land to contain 80 acres, and they further bound themselves by said title bond to have said land surveyed at their expense and to give a rebate on the purchase price of said land for any shortage therein less than 80 acres, which rebate was to be given in ~~proportion~~ the same proportion that 80 acres bears to the whole purchase price mentioned. Yo



Your respondent will now show your Honor that he paid down in cash toward the purchase price of said land the sum of \$500.00 and executed his two notes for the residue thereof, one of which became due on the 1st day of January, 1902, and the second and last one of which for the sum of \$500.00 became due and payable on the 1st day of January, 1903, which is the note here sued on. The note which became due on the 1st day of January, 1902, has been fully paid and your respondent has been ready, willing and anxious to pay the residue of the purchase money of said tract in accordance with his contract whenever that residue was ascertained, and to that end he has at various times called upon the said Lucas to have said land surveyed, the amount thereof ascertained and has informed him as well as the complainant that he was ready to pay such balance on said land, if any, as remained due thereon, whenever said land was surveyed, the balance due thereon ascertained and a proper deed executed. He has notified the said Lucas and the said Rivers by written notice that he was ready to pay the balance of the purchase money due on said tract of land, and requested them to have said land surveyed and a deed executed, and has further notified them that if they did not survey said land and have said deed made, that he would himself have the same surveyed at their expense. This notice was served by the delivery of a copy thereof to the said John Lucas and John Rivers on the 7th day of February, 1903, all of which will more fully and at large appear by reference to said notice which is here filed as part hereof marked "Exhibit A-B".

Your respondent will now further show your Honor that said Rivers and Lucas failed and refused to have said land surveyed and in accordance with said notice, your respondent on the 18th day of April, 1903, had said land surveyed by W.E. Thompson, a competent surveyor and the acreage thereof ascertained, which acreage amounts to  $58\frac{1}{2}$  acres. A copy of said survey and the plat with the same is herewith filed as part hereof marked "Exhibit A-C".

Your respondent will now show your Honor that immediately after having said survey made he notified said Lucas and said Rivers that he had had said survey made, and the result thereof, and he then tendered to them, in gold, the balance of the purchase price due on said land, in accordance with the terms of said con-



tract, and demanded a deed, which deed they failed and refused to make, and likewise refused to accept said money, and respondent has retained said money ever since, and it is now deposited in the Powell's Valley Bank, and will be filed with this answer, whould the Court so require.

Respondent denies that said land was sold to him by the boundary; he denies that said Lucas signed said title bond through fraud or misrepresentation upon the part of respondent; he denies explaining to said Lucas that said bond did not mean that the land was being sold by the acre, or taht it was a sale by the boundary, and he further denies the allegation that he told Elkanah Pennington before he purchased said note that it was good and that he the said Stout owed said money. It is true, however, that Mr. Pennington, some time after he purchased said note informed respondent that he had done so and respondent told him that that was all right, meaning thereby ~~that~~ respondent would as soon that said Pennington had said note as for said Lucas to have it, and in fact respondent supposed even for some time after said note was executed and said Lucas had assigned it, that said tract of land contained 80 acres, and that said note was all right.

Respondent will further show your Honor that the contract between himself and the said Lucas was duly admitted to record in the County Court Clerk's office of Lee County, open to the inspection who desired to investigate it, and both the said Penningtons and the said Rivers are charged with notice of the condition of said sale and with notice of the fact ~~that~~ it was a sale by the acre.

And now having answered said bill, and praying that said parties be required to accept the balance due them and make him a proper deed, he prays to be hence dismissed.

L. J. Duncan )  
L. J. Hyatt ) :- P.D.



J. W. Rivers  
vs. { Du Chy.  
E. S. Stout et al

Answer of E. S. Stout.

Filed in open court  
and by leave thereof  
November 6<sup>th</sup> 1903.

A. B. Munsey clerk



J. W. Rivers, Plff.  
vs  
E. S. Stout, et als. Defs. } In Chancery.

This Cause came on this day to be finally heard on the papers formally read in this Cause, and was agreed by counsel, and it appearing to the Court that the plaintiff's debt has been fully paid since the institution of this suit, it is therefore adjudged, ordered and decreed that the plaintiff recover of the defendant his costs in this Cause expending, including an attorney's fee of \$1500, and there remaining nothing further to be done in the premises, said Cause is stricken from the docket.



J. W. Rivero Plff  
vs for Chancery  
E. S. Stout et al Defs

Final Decree

See - Chas O.B.  
No. 7 page 534

Enter this decree  
H. C. W. Stein  
This Sept 29/94 Judge



J. W. Rivers

E. S. Stout <sup>r</sup> et al.

On motion of the defendant, E. S. Stout, by his counsel, leave is granted him to file his separate answer to the Plaintiff's bill, and the same is accordingly filed; and the Plaintiff replied generally to said answer.

Thereupon this cause came on this 6<sup>th</sup> day of November, 1903, to be heard upon the Plaintiff's bill and exhibits filed thereon, the said answer of E. S. Stout and general replication thereto, and was argued by counsel. It is thereupon ordered that this cause be continued.



J. W. Rivers  
r & Lu Chy  
Ed. Stout et al

Decree No 1

Enter this decree  
Nov 6, 1903.

H. W. Sium  
Entered Nov. 6. 1903  
Chy. O. B. 7. P. 364



To John Lucas and John Rivers:--

You will please take notice that I am now ready to pay the balance of the purchase money due on the tract of land purchased by me from you, the said John Lucas, and for which land, you on the 20th day of November, 1900 executed to me your title bond signed by yourself and wife, and by which title bond you the said Lucas bound yourself to convey said tract of land to me by metes and bounds with covenants of general warranty and freedom from incumbrances when I paid the full amount of the purchase price therefor, and by which title bond you the said John Lucas, bound yourself to have said land surveyed and to give a rebate on the purchase price for any shortage less than 80 acres. The balance of said purchase price is evidenced by a note or bond which became due and payable on the 1st day of January, 1903, and which note I understand has been transferred or assigned to you, the said John Rivers. I hereby request and require that you have said land surveyed and prepare and execute the deed provided for in said title bond, and in the event of the failure of you and each of you to have said land surveyed and said deed made, I will have said survey made myself at your expense, and I give you 12 days in which to make said survey, and if not made during that time I will take it for granted that you do not intend to have said survey made and will proceed to have it made myself.

Very respectfully

E. S. Stout

February 7<sup>th</sup>, 1903.

Virginia, Lee County, to-wit:

I, Joseph B. Barker, a Justice of the Peace for the county and State aforesaid, do hereby certify that J. S. Williamson has this day made oath before me that he did on the 7 day of February, 1903, deliver a true copy of the above notice to John Lucas, and that on the same day he delivered a like copy thereof to John Rivers, each in Lee County, Virginia.

Given under my hand this the 7 day of February, 1903.

J. B. Barker, J.P.



Perkins, Jan. 1863.

Very respectfully

Yours will proceed to have attached myself.

I will do it for myself that you do not intend to have said for

to have in which to have said for myself, and it not being said for the

I will have said for myself and for myself, and I will do it

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Survey made for E. S. Stout of the  
John Lucas Lands on Wallens Ridge  
April 18<sup>th</sup> 1903 by a Horizontal Measurement  
Beginning at a stake opposite a walnut  
also a corner to A. J. Lucas and with  
his Line S  $6\frac{3}{4}$  W 1780 Feet to Stake near Walnut  
S  $6\frac{1}{4}$  E. 370 Feet to a Large Rock  
S  $12\frac{3}{4}$  E. 128 " " " Stake  
S  $27\frac{1}{2}$  E. 134 " " " "  
S.  $1^{\circ}$  E 80 " " " "  
S  $23\frac{1}{2}$  W 105 " " " Walnut  
S  $19$  W 158 " " " Walnut & Sugartree  
S  $22\frac{1}{4}$  W 141 " " " Small Locust  
S.  $18$  W 150 " " " Stake  
S.  $5\frac{1}{2}$  E 720 " " " ~~Chestnut oak~~ Water oak  
on Top of Wallens Ridge in Rocks  
S  $71$  W 295 to Chestnut oak & Small Gum  
Corner to William Lucas  
Thence down a hollow with Said  
Lucas & Campbell Music Line  
N  $8\frac{1}{2}$  W 230 Feet to a Buckeye in hollow  
N  $12$  W 515 " to Walnut and ash  
N.  $26$  W 567 " to Small Walnut & Sugartree  
N.  $19\frac{1}{2}$  W 294 " to Top of cliff opposite a Spring  
N.  $13$  E. 365 " to Stake near a Walnut  
N.  $7\frac{1}{2}$  W 130 " to Stake & Popow  
N  $14$  E 190 " to Stake below a Spring  
N  $6\frac{1}{2}$  E 475 " to "  
N.  $25\frac{1}{2}$  W 165 " " "  
N  $11$  E. 180 " " " Buckeye  
N.  $30$  W 173 feet to Red Elm.  
N.  $1^{\circ}$  E 156 " " " White Walnuts



1 N. 21 E. 412 Feet to a Stake  
2 in the old Lane opposite  
3 a Large Rock then with  
4 the original John Jaynes Line  
5 N. 81 E 796 Feet to the Beginning  
6 Containing 58<sup>1</sup>/<sub>2</sub> acres,  
7 more or Less.

8 W. E. Thompson Sur.

9 Apr. 1903.



Mr. J. C. Mael and James W. Orr  
be the undersigned have this day  
compromised the matter in contro-  
versy concerning the payment of  
a five hundred dollar note under  
the agreement the said stout will  
pay the five hundred dollars with  
the interest each party to pay their  
own costs and lawyer fees could you  
not advise Mr. Rivers to receive the  
money this 18th day Feb. 1904

C. S. Stout

John Lucas

Rebecca Lucas



E. S. Stout et  
als



KNOW ALL MEN BY THESE PRESENTS: That we John Lucas and Rebecca E. Lucas his wife are held and firmly bound unto E. S. Stout in the sum of Three thousand dollars the payment whereof well and truly to be made to the said E. S. Stout we bind ourselves heirs &c firmly by these presents, and as to this obligation we each waive the benefit of our homestead exemptions. Witness our hands and seals this the 20th day of November 1900.

The condition of the above obligation is such that whereas the said John Lucas, and wife have sold to the said E. S. Stout a certain tract of land lying on Wallens Ridge in the said County of Lee, adjoining the lands of Andy Lucas, Cam Lucas and others, and which we guarantee to contain eighty acres, for the sum of Fifteen hundred dollars of which the sum of Five hundred dollars is paid in hand and the receipt of which is hereby acknowledged, five hundred dollars is to be paid on the first day of January 1902, with interest from January 1st 1901, and the residue of Five hundred dollars to be paid on the first day of January 1903, with interest from January 1st 1901;

Now, if the said John Lucas and wife shall make a good and sufficient deed conveying the said eighty acres of land to the said E. S. Stout by proper metes and bounds with covenants of general warranty, free from all encumbrances when the said E. S. Stout shall have paid to him the full amount of the purchase price therefor then this obligation to be void otherwise to remain in full force and virtue and the said Lucas is to have said land surveyed at his expense, and a rebate will be given on the purchase price for any shortage less than eighty acres in the same proportion that eighty acres bears to the whole purchase price mentioned.

Witness the following signatures and seals, the day and date first above written.

John Lucas (Seal)

Rebecca E. Lucas (Seal)

Virginia, Lee County to-wit;

I, W. A. Orr Jr. a Justice of the Peace for the County aforesaid, in the State of Virginia, do certify that John Lucas <sup>and Rebecca E. Lucas</sup> whose names are signed to the foregoing writing, bearing date the 20th day of November 1900, have acknowledged the same before me in my County aforesaid.



Given under my hand this the 21st day of November 1900.

W. A. Orr Jr. J. P.

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County,  
the 23rd day of November 1900. This title bond being duly stamped was presented  
and together with the certificate thereto annexed, admitted to record.

Teste; B. M. Morgan, Clerk.

A Copy, Teste; ~~B. M. Morgan~~-----Clerk.  
(D. B. 36 page 579 &c)



John Lucas wife  
To { Fitts Bond  
E. S. Stout

Ex A."

Copy  
—

Clerk 50 cts-



The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon *John Lucas, Elkanah Pennington,*  
*Rebecca Pennington and E. S. Stout*

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules  
to be held for the said Court, on the *3rd* Monday in *September* 190*3*,  
to answer to a bill in chancery, exhibited against *them* in our said Court by  
*John W. Rivers*

And have then there this writ. Witness. A. B. MUNSEY, Clerk of our said Court, at  
the court-house, the *21st* day of *August* 190*3*, and in the  
12*8th* year of the Commonwealth.

*A. B. Munsey* Clerk



Serve Copies on  
John Lucas  
Elkanah Pennington  
Rebecca Pennington  
& E. S. Stout

R. M. Ely

Form No. 300 1/2

John M. Rivers

US. } SUBPOENA  
IN  
CHANCERY.

John Lucas et als.

Arr. & Noel p. q.

To 2<sup>nd</sup> September. Rules

1903, Lee Circuit Court.

Executed Sept 11-1903  
by delivering a true copy  
of the within summons  
to all the within parties  
A. B. Pennington & S.  
for M. G. Phillips  
S. L. C.